

ORIGINAL

DEC 2005  
Page 2U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

By mail

NO DPP

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District	05-838
Name (under which you were convicted): <u>Kevin L. Washington</u>	Docket or Case No.: <u>9603000529</u>	
Place of Confinement: <u>Pelican Correctional Center</u>	Prisoner No.: <u>211354</u>	
Petitioner (include the name under which you were convicted)  <u>Kevin L. Washington</u>	Respondent (authorized person having custody of petitioner)  <u>Thomas Carroll</u>	
v.		
The Attorney General of the State of <u>M. Janet Brady</u>		

## PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Delaware Court of Appeals  
6. Herrmann Court house, 1020 W. King street, Wilmington  
Dec 19801  
(b) Criminal docket or case number (if you know): # 9603000529
- (a) Date of the judgment of conviction (if you know): April 30<sup>th</sup> 1998  
(b) Date of sentencing: September 18, 1998
- Length of sentence: 23 years Level 5 imprisonment
- In this case, were you convicted on more than one count or of more than one crime? Yes  No
- Identify all crimes of which you were convicted and sentenced in this case: (2) counts of unlawful sexual intercourse first degree, (1) count of unlawful sexual penetration third degree, as well as guilty of the lesser included offense of unlawful sexual contact second degree
- (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? I pleaded not guilty to (3) counts of unlawful sexual intercourse first degree, and (1) count of unlawful sexual penetration third degree.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: In the supreme court of the state of Delaware

(b) Docket or case number (if you know): 421, 1998

(c) Result: Affirmed

(d) Date of result (if you know): March 24, 2000

(e) Citation to the case (if you know): 748 A.2d 408

(f) Grounds raised: See, Appendix A-1 thru A-2

(g) Did you seek further review by a higher state court? Yes  No

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Result: N/A

(4) Date of result (if you know): N/A

(5) Citation to the case (if you know): N/A

(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): N/A



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(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes  No

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Superior court of new castle county Delaware

(2) Docket or case number (if you know): # 9603000529

(3) Date of filing (if you know): October 29, 2004

(4) Nature of the proceeding: motion for postconviction relief rule (61)

(5) Grounds raised: SC, Appendix A-100 thru A-116

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes  No

(7) Result: N/A

(8) Date of result (if you know): N/A

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(3) Third petition: Yes  No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Lack of the production of the grand jury minutes.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):  
 on october 2004 movant noticed similarities between the state's attorney "Robert Goff" hand-writting and that of the alleged grand jury foreperson, the original indictment [REDACTED] Signature was different from a copy of original indictment, movant was in the housing arts where he couldn't get copies, so movant sent Exhibit A-1 with a letter to the Honorable Judge James T. Vaughn. ( see, Superior Court Docket sheet, Docket number 130, page 14, entry date January 5, 2005 mailing date 12/29/2004)

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

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(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: motion for postconviction relief rule (61)

Name and location of the court where the motion or petition was filed: New Castle County Court-house, 500 W. King St, Wilmington 19801

Docket or case number (if you know): # 96a3cc5,29Date of the court's decision: September 13, 2005Result (attach a copy of the court's opinion or order, if available): Affirm. (See, Appendix A-193, Also see motion to Affirm within H-166 thru A-169

(3) Did you receive a hearing on your motion or petition?

Yes  No 

(4) Did you appeal from the denial of your motion or petition?

Yes  No 

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes  No 

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/AGROUND TWO: Prosecutorial misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The movant hereby raises the assertion that the state's prosecuting attorney, Robert Caff, forged the signature of a supposed grand jury foreperson for the express purpose of securing jurisdiction to try the accused

(b) If you did not exhaust your state remedies on Ground Two, explain why: because it  
couldn't be discovered through due diligence

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: because I didn't  
receive the copy of the original indictment with the  
conflicting signature until after direct appeal process

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: motion for postconviction relief rule (61)

Name and location of the court where the motion or petition was filed: New Castle County  
Court - House, 500 W. King St. Wilmington DE, 19801

Docket or case number (if you know): # 9603000529

Date of the court's decision: May 17, 2005

Result (attach a copy of the court's opinion or order, if available): Denied. (See Appendix  
A-137 thru A-141)

(3) Did you receive a hearing on your motion or petition?

Yes  No

(4) Did you appeal from the denial of your motion or petition?

Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: In the Supreme Court  
of the State of Delaware, 55 The Green Dover Delaware

Docket or case number (if you know): 242, 2005Date of the court's decision: September 13, 2005Result (attach a copy of the court's opinion or order, if available): Affirm (See, Appendix A-193)(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: u/a(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/AGROUND THREE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):

Defense counsel had the obligation to refute testimony of State's Expert Dr. DeJong, whom he stated that in a sexual abuse case a young /child would heal after a period of a week or two, and there would absolutely be no signs of trauma nor sexual abuse

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No (2) If you did not raise this issue in your direct appeal, explain why:

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: motion for postconviction relief rule(61)  
Name and location of the court where the motion or petition was filed: Superior court of New Castle County, Delaware

Docket or case number (if you know): # 96a300n529

Date of the court's decision: 9/17/2001, 10/10/2002, 5/17/2005

Result (attach a copy of the court's opinion or order, if available): See ( Appendix A-26 thru A-37, A-57 thru A-65, and A-100 thru A-116

(3) Did you receive a hearing on your motion or petition?

Yes  No

(4) Did you appeal from the denial of your motion or petition?

Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: In the Supreme Court of the State of Delaware

Docket or case number (if you know): 401, 1998 and 242, 2005

Date of the court's decision: 3/24/2000 and 9/13/2005

Result (attach a copy of the court's opinion or order, if available): See ( Appendix A-26 thru A-37, A-57 thru A-65 and A-100 thru A-116

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: N/A

GROUND FOUR: Judicial abuse of discretion

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

trial judge Honorable Richard R. couch abused his discretion by first introducing, lesser included offense's only after the alleged victim/ state's primary witness recanted her testimony on the second day of trial, plus the introduction was done after the reviewing Justice and all legal representatives agreed there would be no need for any special jury instructions. etc, (Appendix A-209 pg 46)

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A


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## (c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No (2) If you did not raise this issue in your direct appeal, explain why: N/A

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes  No 

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for postconviction relief rule (61)  
Name and location of the court where the motion or petition was filed: Superior Court of New Castle County DelawareDocket or case number (if you know): 4 9603ccas 529Date of the court's decision: May 17, 2005Result (attach a copy of the court's opinion or order, if available): Denied, see, (Appendix A-137 thru A-141)

(3) Did you receive a hearing on your motion or petition?

Yes  No 

(4) Did you appeal from the denial of your motion or petition?

Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: In the Supreme Court of the State of Delaware

Docket or case number (if you know): 242, 2005

Date of the court's decision: 9/13/2005

Result (attach a copy of the court's opinion or order, if available): Affirm. See, Appendix A-100 thru A-116

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Never presented my case to federal court, not only because lack of knowledge, but I also trusted that the State of Delaware, had followed the due process of law, but that was not the case.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: None, because there was not a preliminary hearing in the above case, which raise's the question? How do the state obtain a rule 9 warrant for a person already in their custody?

(b) At arraignment and plea: ██████████ N/A

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(c) At trial: J. Dallas Winslow Jr.

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(d) At sentencing: J. Dallas Winslow Jr.

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(e) On appeal: J. Dallas Winslow Jr. was release from the case under Rule 26 (c) / then Joseph Gabay was appointed to oversee the case

(f) In any post-conviction proceeding: Pro 'SC

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(g) On appeal from any ruling against you in a post-conviction proceeding: Pro 'SC

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17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: 1/4

(b) Give the date the other sentence was imposed: 1/4

(c) Give the length of the other sentence: 1/4

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\* open due diligence movant couldn't have discover that the state attorney Robert Goff acted in bad faith by falsifying indictment in order to gain jurisdiction to try and convict the accused. under the super. ct r.c.r.p Rule(1) (i)(s): The bars to relief in paragraph (1), (2) and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction, or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction. The A.E.D.P.A has stated that any crime punishable by a death sentence or "any infamous crime" should be granted adequate review to assure that no person is held in violation of the U.S. constitution, or laws or treaties, because of these combine issue amounting to plain error, which constitute a fundamental miscarriage of justice. the court should review these grounds, conviction and penalties DE NOVA.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: merant pray's the reviewing Justice will render an acquittal or vacate any and all sentence handed down by superior court which failed to hold the jurisdiction to convict or punish the accused. or any other relief to which petitioner may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 11/28/2005 (month, date, year).

Executed (signed) on 11/28/05 (date).

Barry L. Washington

Signature of Petitioner

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\*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/R

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IN FORMA PAUPERIS DECLARATION

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[Insert appropriate court]

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Kevin L. Washington  
#211354 Unit Bldg. 22 B-U-4  
Delaware Correctional Center  
1181 Paddock Rd.  
Dover, Delaware 19901



Clerk of the Court  
United States District Court  
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Lockbox 18  
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19801-3570